IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CASE NO.: **FAO NO.511 OF 1987**

DATE OF DECISION: September 6, 2006

VINOD KASHYAP ...APPELLANT

VERSUS

STATE OF HARYANA AND OTHERS ...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE ASHUTOSH MOHUNTA.

PRESENT: MR. DEEPAK SURI, ADVOCATE FOR THE APPELLANTS.
MR. ASHISH KAPOOR, ADDL.A.G., HARYANA.
MR. S.S. AULAKH, ADVOCATE
FOR THE INSURANCE COMPANY.

ASHUTOSH MOHUNTA, J. (ORAL)

The appellants Vinod Kashyap has filed the present appeal against the judgement of Motor Accident Claims Tribunal, Ambala (for short 'the Tribunal') dated 30.1.1987, by which compensation of Rs.50,000/- has been awarded to him on account of injuries suffered by him in a motor accident.

Briefly, the facts of the case are that on 25.10.1985, the appellant was travelling in a Haryana Roadways bus bearing No.HRX-1606. He boarded the bus from Chandigarh at about 4.45 A.M. and was going to Delhi. At about 5.40 A.M. when the bus reached near the Oberoi Petrol Pump in Ambala City and as soon as it crossed a small bridge, a truck being driven by Gurpal Singh came from the opposite side and dashed against the bus on its right hand side. As a result of the accident, the bus overturned and fell in ditch on the side of the road the appellant suffered injuries.

The appellant filed a claim petition claiming a compensation of Rs.2,50,000/- on account of injuries suffered by him in the motor accident.

Reply was filed on behalf of the State of Haryana, wherein it was averred that the accident took place because of the rash and negligent driving of the driver of the truck, namely, Gurpal Singh.

Before the Tribunal, the question was whether the accident took place because of the rash and negligent driving of the driver of the truck No.PJV-3090, driven by Gurpal Singh or by the rash and negligent driving of the driver of the bus bearing No.HRX-1606 driven by Ranbir Singh. One of the claimants Satish Kumar, who appeared as PW-14, stated that the accident took place because of the rash and negligent driving of the truck driver. However, Girdhari Lal, PW3 and Vinod Kashyap, PW10, deposed that the accident took place because of the rash and negligent driving of the drivers of both the vehicles as the bus as well as the truck were being driven in a rash and negligent manner.

No cogent evidence was led by the drivers of the bus as well as the truck. The Tribunal found that accident took place because of the rash and composite negligence of drivers of both the offending vehicles.

A separate written statement was filed by the driver of the truck, who stated that the accident took place because of the rash and negligent driving by the bus driver. He, however, admitted the accident.

A perusal of the testimonies of the eye witnesses who are travelling in the bus, namely, Satish Kumar, Girdhari Lal, Vinod Kashyap make is abundantly clear that the accident took place because of the rash and negligent driving of drivers of both the truck as well as the bus. Thus, I uphold the findings of the Tribunal.

It has been averred that as a result of the accident, the appellant suffered a depressed fracture in the left frontal region of the forehead for

which he was operated upon. He also had got dental wiring done through the plastic surgery. In support of his case, the appellant has relied upon the statements of Dr. S.N. Mathuria, Lecturer, Neuro-Surgery, PGI, Chandigarh who has appeared as PW-4 and stated that the appellant Vinod Kashyap had suffered a depressed fracture in the left frontal region for which he was operated upon and dental wiring was done by a plastic surgeon. It was also further stated by the Doctor that the appellant was admitted in the hospital on 25.10.1985 and was discharged on 4.11.1985. According to him, fractured fragments of left frontal bone were removed during operation and at present there is no bony protection to that portion of the frontal lobe of the brain, and if he sustains any further injury on that part, it would be directly traumatizing the brain and may lead to serious consequences. He also opined that the claimant can have post traumatic headaches. It was further stated that after 1½ years of operation, a metal plate can be fixed to the left frontal portion to provide protection to that area of the brain by doing cranic-plasty.

PW-5, Dr. D.R.S. Abu, Senior Resident, Plastic Surgeon in the PGI stated that a fracture was found in his maindable for which intradental wiring was done and even after removing the wires, the claimant was found to have slight restrictions in opening his mouth and was advised to use a rubber wedge due to the injuries suffered. It was further opined that as a result of the injuries sustained, there has been a slight disfigurement and asymetry in the face of the appellant. This Dr. K.R.S. Abu, PW-5 also stated that for his head injury the appellant was operated by him on 3.11.1985.

A perusal of the injuries suffered by the appellant, Vinod

Kashyap shows that he has suffered fractures on the left frontal region of the forehead and had to also undergo operations. Dental wiring had also to be done to keep his jaws intact. In my considered opinion, compensation of Rs.50,000/- as awarded by the Tribunal is highly inadequate. The claimant has suffered disfigurement of his face also. The claimant would always have to protect his forehead from any further injury as that could lead to serious consequences according to the Doctors who have deposed in the case.

Keeping in view the injuries suffered by the claimant as well as the amount spent by him on his treatment, I award a compensation of Rs.1,50,000/- to the appellant. He is also held entitled to the interest at the rate of 8% per annum payable from the date of filing of the claim petition till realization.

The insurance company as well as the State of Haryana are held jointly and severally liable to pay the compensation.

The appeal stands disposed of in the above terms.

September 6, 2006 **(ASHUTOSH MOHUNTA)**
Gulati **JUDGE**